IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 159

J. R. MASON,
Petitioner,

vs.

MERCED IRRIGATION DISTRICT,
Respondent.

PETITION FOR A REHEARING.

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Counsel for Petitioner.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Comes now the petitioner herein, J. R. Mason, and presents this his petition for a rehearing of the petition for a writ of certiorari herein, and in support thereof respectfully submits:

The final decree as construed and applied violates the settled principle that a federal court has no jurisdiction to interfere with the borrowing power of the States or with the performance by public officials of public duties.

It is submitted that nothing contained in the *U. S. v. Bekins* decision (304 U. S. 27) reversed or in any way modified the doctrine of immunity adhered to in the

Ashton case (298 U. S. 513) or the *Brush* case (300 U. S. 352, 367, 369). This doctrine has, we submit, been also adhered to steadfastly in subsequent cases, such as *Arkansas Corp. v. Thompson* (313 U. S. 132), *Central R. R. of N. J. v. Martin,* 115 F. (2d) 968. (Cert. denied.)

In the case of *U. S. v. Bekins,* supra, no question as to the validity or effect of any order was before the Court.

The Court is not permitted to invoke any jurisdiction over a petitioner in any interlocutory decree rendered under Chapter IX. (11 U. S. C. A. 401-404.) None was invoked in that decree in the instant case, upon respondent.

The statute in Sec. 403f provides separately for a final decree, from which this appeal is taken.

Respondent argues, "Obviously the only thing determined by the final decree is that the district has carried the interlocutory decree into effect. . . . Further, no interference with governmental power is shown and none exists." Respondent is mistaken.

We quote from the final decree, as follows:

> "Petitioner, Merced Irrigation District is hereby discharged from all debts and liabilities dealt with in the plan of composition . . ."

This "discharge" in the final decree constitutes an "interference" with governmental power and with the irrevocable pledge to exercise the taxing power confided to respondent, because it allows public officials to violate the taxing and remedial procedure contracted under state law.

The power of a state to borrow money and contract its inexhaustible power to annually levy and collect ad valorem taxes, whether that power is contracted by the State or an instrumentality of the State to whom that

power has been confided as here, is one of the highest attributes of sovereignty and governmental power.

The following cases prove conclusively that the final decree as construed and applied, supra, constitutes an "interference" with the exercise of governmental powers:

Selby v. Oakdale, 140 Cal. App. 171, 35 Pac. (2d) 125; *Provident v. Zumwalt,* 12 Cal. (2d) 365, 85 Pac. (2d) 116; *Anderson-Cottonwood v. Klukkert,* 13 Cal. (2d) 191, 88 Pac. (2d) 685; *Happy Valley v. Thornton,* 1 Cal. (2d) 325, 34 Pac. (2d) 991; *Herring v. Modesto,* 95 Fed. 705; *Bradley v. Fallbrook,* 164 U. S. 112.

The same basic jurisdictional question presented in the instant case was submitted to this Honorable Court by appellant's counsel in the case of *Ashton v. Cameron County Water Imp. Dist. No. 1,* No. 859, October Term, 1935, "Motion for leave to file brief as amici curiae in opposition to motion for rehearing and brief in support thereof", signed by Messrs. W. C. Cook and Samuel Herrick, counsel.

The final decree, as construed and applied in the instant case squarely conflicts with the rule in the *Ashton* case, which is still, we think, the law of the land:

> "Neither consent nor submission by the States can enlarge the powers of Congress. . . . Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted . . . The difficulties arising out of our dual form of government, and the oportunities for differing opinions concerning the relative rights of the state and national governments are many; but for a very long time this Court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the States and their political subdivisions. The same basic reasoning which leads to

that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."
Ashton v. Cameron County, 298 U. S. 513.

"The substance, and not the shadow, determines the validity of the exercise of the power."
Postal Tel. Co. v. Adams, 155 U. S. 688.

It is therefore respectfully urged that this petition for a rehearing should be granted, and that a writ of certiorari be issued out of and under the seal of this Honorable Court as prayed for in the petition for writ of certiorari herein.

Dated, San Francisco, California,
October 28, 1942.

Respectfully submitted,
GEORGE THOMAS DAVIS,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

I, George Thomas Davis, counsel for the above named petitioner, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,
October 28, 1942.

GEORGE THOMAS DAVIS,
Counsel for Petitioner.